

TITLE 14. Fish and Game Commission

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 1050 and 8282 of the Fish and Game Code and to implement, interpret or make specific sections 1050, 7857, 8250.5, 8281, 8282, 8284, 9000, 9001, 9001.7, 9002, 9005, 9006 and 9011 of said Code, proposes to amend Section 125 and add Section 125.1, Title 14, California Code of Regulations, relating to the use of rock crabs as bait in commercial finfish traps.

Informative Digest/Policy Statement Overview

1. Establish Regulations Clarifying Use of Rock Crab as Bait in Finfish Traps

Fish and Game Code subdivision 9001.7(j)(2) specifies that rock crab may be used as bait in finfish traps under authority of a rock crab trap permit. Meanwhile, Fish and Game Code Section 8282 specifies that rock crab taken commercially must be a minimum size of 4¼ inches, and Section 5508 of the Fish and Game Code specifies that no species of fish can be possessed on a boat in a condition that its size cannot be determined.

A past common practice used by finfish trap fishermen, particularly those targeting California sheephead, has been to use crushed rock crab as bait in finfish traps. However, once a rock crab is crushed, its size can no longer be determined. Consequently, Department enforcement staff are unable to enforce violations of the minimum size limit when undersized rock crab are used as bait in this manner.

Similarly, Section 5509 of the Fish and Game Code specifies that no species of fish may be possessed on a boat in a condition that the species cannot be determined. Once a rock crab is crushed, it may become indistinguishable from other species.

The Department proposes the Commission adopt clarifying language, pursuant to its authority to manage the rock crab resource established in Fish and Game Code Section 8282, to make clear that these two Code provisions apply specifically to rock crab that is used as bait in finfish traps, despite the authorization to use crabs as bait as provided in subdivision 9001.7(j)(2). The proposed regulations will serve to resolve any potential conflict or misinterpretation of the statutory provisions by making them specifically applicable to the situation of rock crab utilized as bait in finfish traps.

Department enforcement staff believe that at this time, several finfish trappers who use rock crab as bait are already abiding by lawful methods in practice, however, adding the proposed regulatory language will provide needed clarity to all constituents and fishery participants.

Because legal methods of using rock crabs as bait are already being used successfully by many finfish trappers apparently without reduction in their fishing success, the Department believes that the proposed change to finfish trap baiting practices will not result in any loss in revenue from reduced catches, or add additional operating costs for finfish trap fishermen.

The proposed language simply states that rock crab used as bait must be maintained in

such a condition that their size and species may be readily determined. This requirement is consistent with the existing laws established in Fish and Game Code sections 5508 and 5509.

2. Incorporate a Rock Crab Permit Revocation and Suspension Provision into Regulations in Section 125, Title 14, CCR

The Department proposes to add regulatory language that would allow a northern or southern rock crab permit to be revoked or suspended by the Commission upon violation of the Fish and Game Code, or violation of other regulations adopted by the Commission, by the holders thereof, their agents, employees, or those acting under their direction and control.

Regulations that allow for revocation or suspension of permits are commonplace for California's commercial fishery permit programs. The Department proposes adding the provision in order to provide notice to permit holders that violations could result in suspension or revocation of their northern or southern rock crab permit.

3. Technical, Organizational and Clarifying Changes

The Department proposes to amend the title heading of Section 125, Title 14, CCR, from "Commercial Take of Rock Crab" to "Commercial Rock Crab Permits." This more accurately describes the content of the present regulations in this Section. Secondly, the Department proposes to add new Section 125.1, where the regulations that specify the requirements for commercial take of rock crab would be stipulated, including the proposed new language governing the use of rock crabs as bait in finfish traps.

4. Repealer of Select Rock Crab Statutes- Inclusion in Title 14, CCR

In conjunction with proposed legislative amendments to strike sections of the Fish and Game Code pertaining to rock crab fishing, the Department proposes that the Commission institute in its regulations three additional items, under its authority to manage the rock crab fishery granted in Section 8282.

While the Commission has management authority over the commercial rock crab fishery, there are many Fish and Game Code statutes that apply to rock crab fishing and crab fishing generally. These statutes pre-date the delegation of management authority, which became effective in 2004. However, the Commission does not have the authority to make inoperative applicable statutes, as it does for commercial fisheries that are managed under authority of a Fishery Management Plan established under authority of the Marine Life Management Act. Therefore, the Commission cannot simply adopt a regulation that makes a particular statute inoperative, as it can for some other fisheries.

Therefore, the Department is proceeding with efforts to repeal the statutory language, but first proposes the Commission establish the Title 14 regulations under its own authority.

The three items are as follows, and would all be included within the text of proposed new Section 125.1:

(a) Refined language defining the rock crab minimum size limit of 4¼ inches; presently located in Fish and Game Code subdivision 8282(a);

(b) The requirement that any person taking rock crab carry a measuring device and follow specified measuring procedures; presently located in Fish and Game Code subdivision 8282(b); along with the requirement that any undersized crab must be released immediately.

(c) Incidental take provisions presently found in Fish and Game Code subdivision 8284(b) would be updated to reflect the rock crab permit requirement, and clarifying language would be added so that any species taken incidentally shall be released immediately.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Beach Resort Monterey, Bayview Conference Room, 2600 Sand Dunes Drive, Monterey, California, on Friday, February 2, 2007 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at Humboldt State University, Founders Hall, Green and Gold Room, 1 Harpst Street, Arcata, California, on Friday, March 2, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before February 23, 2007 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. **Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on February 27, 2007.** All comments must be received no later than March 2, 2007, at the hearing in Arcata, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Koell at the preceding address or phone number. **Mike McBride, Enforcement Branch, Department of Fish and Game, phone (909) 987-7262, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Reinforcing the requirements on how rock crab may be used or possessed as bait in finfish traps is proposed to aid enforcement, and improve the understanding of existing law as the new regulations only make clear the circumstances under which rock crab may be used as bait.

Since rock crab will continue to be authorized for use as bait in traps, and there will be little if any change required to the fishing practices of commercial finfish trap fishermen, the Department does not anticipate any change in the harvest levels or operating costs associated with finfish trap fishing activities.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:
- The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: December 12, 2006

John Carlson, Jr.
Executive Director